(1953 49) Department

MS SERIES.

F.O. No. 811

Dated 28 3 1949.

[Despatch Abstract.]

TAXATION & LEVY OF A TAX ON THE UNEARNED INCREMENT IN THE VALUE OF IMMOVABLE PROPERTIES IN URBAN AREAS : PROPOSALS : DROPPED : PAPERS RECORDED.

TAXATION - Proposals - Levy of betterment tax on the sales of immovable properties in urban areas Proposals.

FINANCE DEPARTMENT.

Sub: BUDGET 1949-50 - Proceeds of new Taxation.

The Standing Finance Committee of the Cabinet recommended additional taxation with a view to balancing the budget for 1949-50 and also as an anti-inflationary measure.

(ii) BETTERMENT TAX ON SALES OF IMMOVABLE PROPERTIES IN URBAN AREAS: The proposal is that a betterment tax equal to 25 per cent of the increase in value between 1938 and the date of sale, should be levied in respect of sales of immovable properties in all municipalities, major panchayats and the Corporation of Madras and in any other towns which may be notified by the Government for the purpose. Where the seller had purchased the property subseqently to 1938, the 25 per cent will be calculated on the difference between the purchase price and the sale price. The responsibility for assessing and collecting the tax should be with the Commercial Taxes Department which may be strengthened, if necessary.

The Cabinet at its budget meeting held on the 27th January 1949 approved the proposal generally.

2. The Revenue Department may be requested to make a rough estimate of the additional revenue that may be derived on account of the imposition of each of the above taxes. As the intention is to take credit for this revenue in the budget for 1949-50, the Revenue Department may be requested to furnish the information not later than the 7th February 1949.

T.N.S.R./12.2.49

REVENUE DEPARTMENT.

Please see the notes of Fin. Deptt. from page 1 ante.

2 (ii) Betterment Tax on sales of immovable properties in urban areas: The Local Administration Department seem to be concerned with thisproposal. Necessary extracts may be sent to them for immediate action.

V.K.R./2.2.49

Please see the notes from p. 1 ante.

FINANCE DEPTT.

In regard to betterment tax on sales of immovable property ... Revenue consider that the question is one for the L.A.Deptt. As the tax will be levied for provincial purposes and not for local bodies and will be assessed and collected by the Commercial Taxes Deptt. Revenue will have to deal with this tax also.

T.N.[illegible].R/22.249

REVENUE DEPARTMENT.

Please see the notes from p. 1 ante.

3. Fin. have suggested that this Deptt. will have to deal with ... proposal to levy betterment tax on sales of immovable properties in urband areas. "C" section have under consideration a proposal to levy a provincial tax on the capital invested on new buildings and extension in urban areas. The proposal to levy betterment tax may also be dealt with in that section.

Particulars of the value of immovable properties may be available in the Registration Deptt. and the Board may be have no information on this subject. The I.G. of Registration may therefore be asked to furnish a rough estimate of the revenue that may be derived from betterment tax. Subject to orders a draft memo is

submitted for approval. After issue, extracts from this file may be given to "C" section for necessary action.

V.K.R/3.2.49

The notes fromp.1 ante the memorandum to the Board of Revenue and the Inspector-General of Registration at pages 1-4 c.f. and their replies at pp 11-20 c.f. may be perused.

3. The I.G. of Registration has roughly estimated the amount of additional revenue that can be derived by the levy of betterment tax at Rs.519 lakhs. For details showing how this amount was arrived at, attention is invited to the working sheet enclosed with his letter at pp 12-13 c.f.

This estimate is only approximate as may be seen from his report at pp 11-12 c.f. The I.G. has stated that if necessary he would call for statistics from the districts and submit revised figures in about a month's time. Fin. may be requested to state whether revised figures should be called for.

The file may be sent to Fin. with ref. to para 2 of their note at p. 3 ante. and on its return further action will be taken to give effect to the decisions of the Cabinet.

V.N.R/8.2.49 V.K.R/9.2.49
G.V/9.2.49

FINANCE DEPARTMENT.

The estimates of additional revenue from new taxes dealt with in this file are as follows:-

	Estimate of additional revenue Rs. lakhs	
(a) Tax on first sale of commercial crops:		
Groundnut and cashewnut.	161	
Tax Tea	10	
Cotton.	74	
Other commercial crops.	135	380
Tobacco (60-22)		38
		418
(b) Betterment tax on sales of immovable properties in urban areas.		519
(c) Tax on advertisements and cross-word puzzles.		35
		972.

d. (b) BETTERMENT TAX ON SALES OF IMMOVEABLE PROPERTY ETC: The I.G. of Registration has made his estimate of additional revenue on a rough and ready basis with ref. to the transactions in Madras City as indicated by him on pp-11-13 c.f. He has taken the probable amount of increase in the value of immoveable properties in Madras City during 1947-48 as compared with 1938 as being equal to the difference between the net value of sales in 1947-48 and 1938. This assumes that the quanttum and the classes of sale were roughly the same in the two years. This assumption may not be valid. The tempo of sales of immovable properties will vary from year to year with reference to various factors, and the additional revenue from betterment tax will also vary. More detailed and accurate calculations will have to be made before the additional revenue likelyto be derived from this new tax can be gauged. For the purpose of the budget for 1949-50 we may perhaps take the additional revenue at a conservative figure of Rs.50 lakhs only.

R.R./9.2.49

This file relates to the estimates of additional revenue in regard to the more important of the new taxes proposed. The [illegible]nt items and the anticipated revenue from them are -

	Rs. lakhs
Surcharge on bus fares and tax on goods carried by lorries.	80
12½ per cent surcharge on property tax.	20
Tax on Coffee hotels, etc.	20
Electricity salestax (after allowing for certain concessions with ref. to the remarks of theC.E.)	14
	134

I would suggest that we may take credit for about Rs.226 lakhs under the items dealt with in this file. This may be distributed as follows:-

Commercial crops.	Rs. 175	lakhs)
Betterment Tax in urban areas.	65	")
Tax on Advertisements.	25	")
Total.	226	lakhs.

As the estimates are at best only hits in the dark, there is no point in being very punctilious about the figures and showing a deficit after so many new taxes. The figures suggested in regard to the two items at "A" above are very conservative in view of the departmental estimates.

For purposes of the budget, a sum of Rs. 4 crores may be shown as revenue from new taxes under the head "XIII - Other Taxes and Duties" and the budget speech may deal in a general way with the different new taxes contemplated.

T.N.S.R/10-2-49

I agree. May be done as suggested.

B.G.R./10.2.

Action in regard to the credit to be taken in the budget is being taken separately in Finance. The case is now returned to Revenue for further action in regard to legislation etc., vide K on p. 9 above.

xx/11.2.49

REVENUE DEPARTMENT.

Discussed with Secretary.

2. The recommendation of the Standing Finance Committee and the decision of the Cabinet on this subject will be found at X on p. 1 n.f. When any immovable property in an urban area is sold, the vendor is to be required to pay as tax 25 per cent of the excess of the price realized by him over its value in 1938 or the price paid for the property by the vendor, if the purchase by him was subsequent to 1938. It appears doubtful whether the imposition of a levy of this kind is within the competence of the Provincial Legislature. Legal may advise before further action is taken in this regard.

V.K.R(ao)/16.2.1949

LEGAL DEPARTMENT.

The proposal now is that when immovable property in an urban area is sold, the vendor should be required to pay as tax 25 per cent of the excess of the price realised by him over its value in 1938 or the price paid by him for the property if he purchased it subsequent to 1938.

The taxing powers of the Provincial Legislature extend mainly to the matters specified in the Provincial Legislative List - see especially the entires from 39 to 54. They only relevant entry for

for the present purpose is entry 42, namely, Taxes on lands and buildings. But what that entry contemplates is a levy of tax on lands and buildings as such. The present proposal is not to levy a tax on lands or buildings as such but on the increase in the value which the vendor of a land or building obtains as a result of the sale of such land or building. The tax proposed is in esssance a tax on the profit made by the vendor. As such it cannot be regarded as coming within the scope of entry 42 of the Provincial Legislative List.

Attention is invited in this connection to sections 2 (4A) 6 and 12B of the Indian Income Tax Act, 1922. These sections were inserted in that Act by Central Act XXII of 1947, as amended by Act XLIV of 1947. Under section 6 (vi) income tax is chargeable on capital gains; and section 12B provides that the tax shall be payable by an assessee under the head "capital gains" in respect of profits or gains arising from the sale, exchange or transfer of a capital asset effected after 31-3-1946 and that such profits and gains are deemed to be income of the previous year in which the sale, exchange or transfer took place, subject to the provisions made in that section. The expression "capital asset" has been defined in section 2 (4A) as meaning property of any kind held by an assessee, whether or not connected with his business, profession, or vocation, but not including inter-alia any land from which the income derived is agricultural income. The Government of India have apparently acted on the view that a tax on such increase in value would be income within the meaning of that term in entry 54 of the Federal Legislative List, namely, Taxes on income other than agricultural income. This is clear from the following observatins:-

The Hon'ble Mr. Liaquat Ali Khan (then Finance Member)

Legis. Assembly Debates- Monday -7-4-1947 Vol.IB, No.9 page. 3014.

My Hon.friend Mr. Gole raised a number of points. He started by raising a legal point; he was not quite sure whether this legislature was empowered to levy a tax of this kind. As a matter of fact this was pointed out to me when this Bill was being framed; and I am quite sure that it is within the power of this Legislature to impost this kind of tax. It is not a salestax; it is a tax on income.

Mr. P.B. Gole: May I know whether it comes under item 54 or item 55 of the Government of India Act?

The Hon. Mr. Liaquat Ali Khan:
It is a tax on income and whatever item covers income-tax will cover this also.

It is not really a salest[illegible] from a certain source. Therefore if my Hon.friend Mr. Gole has any doubt about it I have no doubt that either he or some of those who are affected by it will not hesistate to spend some money to have lakhs and lakhs and prove that this Act is ultra vires of legislature."

Whether such increase in the capital value can be regarded as "income" seems to be a debatable question - see portion A of the Finance Member's speech quoted at p.5 ante.

In I.L.R. LIX Calcutta 1343 P.C. (C.I.T. Bengal v.Shaw Wallace & Co) the P.C. observed as follows at p.1350:-

"The object of the Indian Act is to tax 'income" a term which it does not define. It is expanded, no doubt, into "income, profits and gains", but the exansion is more a matter of words than of substance. Income, their Lordships think, in this Act connotes a periodical monetary return "coming in" with some sort of regularity, or expected regularity from definite sources. The source is not necessarily one which is expected to be continously productive, but it must be one whose object is the production of a definite

return, excluding anything in the nature of a mere windfall. Thus income has been likened pictorially to the fruit of a tree, or the crop of a field. It is essentially the produce of something, which is often loosely spoken of as "capital". But capital, though possibly the source in the case of income from securities, is in most cases hardly more than an element in the process of production,".

In the later case of I.L.R. XXII Patna 713 P.C. (Raja Bahadur Kamakshya Narain Singh v. Commissioner of Income Tax) however the P.C. observed as follows (at p.724):-

" Income is not necessarily the recurrent return from a definite source, though it is generally of that character. Income may again consist of a series of separate receipts, as it generally does in the case of professional earnings. The multiplicity of forms which "income" may assume is beyond enumeration.

Whatever view may be taken as to the position of "capital gains" vis-a-vis entry 54 of the Federal Legislative List, it seems to be clear that a tax on "capital gains" does not fall within the Provincial sphere. The proposed tax will not therefore be intra vires the Provincial Legislature.

K.R./28.2.49

REVENUE DEPARTMENT.

In view of what Legal have stated, it is unnecessary to puruse this matter any further. Finance may see before circulation.

V.K.R/1.3.49

(V. Venkateswara Iyer)/2.3.49
Secretary.

FINANCE DEPARTMENT.

Notes from the middle of p.4 above may be perused.

The Legal Deptt. state that the levy of a Betterment Tax on sales of immovable properties in urban areas will not be intra vires the Provincial Legislature. As it does not also seem possible to move the Governor-General to empower the Provincial Legislature by a public notification under section 104 of the Government of India Act, 1935, it is submitted that Finance may agree that the matter need not be pursued.

T.N.S.R(aghavan)/4.3.49
Secretary.

REVENUE DEPARTMENT

Please see the notes from "X" on p. 4 ante.

2. The file may now be circulated to H.M.(Fin) and H.Pr. for orders -

(1) whether it will be considered unnecessary to pursue the Cabinet proposal in regard to the levy of betterment tax on sales of immovable properties in urban areas - please see X at p.1 ante, and

(2) whether the matter should be placed before the Cabinet.

(1) may be accepted.

(2) In view of what Legal have stated, reference to Cabinet is not necessary.

V.K.R(ao)/5.3.49

H.Pr. may see.

B.G(opala) R(eddy)/
H.M.(Fin.)

I am not so sure. Is not income from sale of immovable property exempt from income tax as capital. If so how can the increase in value of immovable property due to peculiar circumstances be income. Legal Secy and Dy.Secretary, Revs. please speak.

K.M(adhava) Menon)/8.3.
H.M.(Agri)

LEGAL DEPARTMENT

This was discussed today by D.S., Revenue and myself with H.M.(Agriculture).

A tax on capital gains on the lines envisaged in this file can scarcely be said to be a tax on income -- See for instance the Full Bench decision in Veerappa Chettiar v. Commissioner of Income tax, Madras - A.I.R. 1930, Madras 123. The tax cannot properly be regarded as falling within the scope of any of the entries in the existing Legislative Lists (including entry 55 of the Federal Legislative List)* The question therefore arises whether the Government of India may not be requested by a notification under section 104 of the Government of India Act to include the tax in the Provincial Legislative List. As the Government of India is abolishing the tax on capital gains with effect from 1-4-1949 there is apparently no reason why they should not permit the Provinces to exploit what appears to be a useful source of revenue (which has been abandoned by them). But the Government of India are scarcely likely to concede that the tax is not within the Central field, having regard to the fact that the tax has, in fact, been treated by them as an income-tax for a period of two years, that is, from 1-4-1947 to 1-4-1949. Although the tax is to be repealed with effect from 1-4-1949, assessments during the years 1947-48 and 1948-49 will not be affected and the Government of India are extremely unlikely to agree to any course of action which will hrow doubt on the validity of the levy during those two years. There seems therefore to be little use in taking up this point with the Government of India now, especially in view of the fact that the Draft Constitution of India includes all subjects not specifically allotted to any of the Legislative Lists in the Federal field.

H.M.(Agri) therefore agreed that the matter may be dropped. He, however, wished the reasons for dropping the matter (which have been set out in the above note) to be placed on record.

K.R/16.3.1949

This is however an arguable matter.

REVENUE DEPARTMENT

This may be circulated to H.M.(Fin) H.M.(Agri) and H.Pr. The proposal may be dropped.

V.K.R./17.3.
G.V(enkateswara Iyer)/17.3.149

B.G(opala) R(eddy)/21.3. H.M.(Fin)

O.P.R(amaswami Reddiar)/23.3. H.Pr.

Please see the notes from A on p. 4 ante and the orders

circulation, above.

The papers may be recorded as a G.O.

G.O. (Ms) No. 811 Revenue dated the 28th March 1949
RECORDED
V.K.R./25.3.

Abstract

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TAXATION - Levy of a tax on the unearned increment in the value of immovable properties in urban areas - Proposal dropped - Papers Recorded

/True copy/

Office Assistant.
Madras Record Office, Egmore.